

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 56, "Fining and Citations," Iowa Administrative Code.

This rule making describes the process for the informal conference on a contested citation issued to a facility licensed pursuant to Iowa Code chapter 135C, which is provided for in Iowa Code section 135C.42, and incorporates legislative changes made by 2013 Iowa Acts, Senate File 394.

The Department does not believe that the amendments impose any financial hardship on any regulated entity, body, or individual.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0922C**. Comments were received from the Iowa Health Care Association and LeadingAge Iowa. After consideration of the comments, subparagraph 56.14(3)"c"(2) was revised to allow facilities to submit supporting documentation for the informal conference after the deadline established, but only as permitted by the independent reviewer upon good cause shown.

The State Board of Health reviewed the proposed amendments at its July 10, 2013, meeting, and subsequently approved this rule making at its September 11, 2013, meeting.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 135C.14 and 135C.42 and 2013 Iowa Acts, Senate File 394.

These amendments shall become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 56.14(3) as follows:

**56.14(3) Informal conference.** If the facility desires to contest a citation for a class I, class II or class III violation, the facility shall notify ~~the director of the department of inspections and appeals~~ in writing that it desires to contest such citation and request in writing an informal conference with ~~a representative of the department of inspections and appeals~~ an independent reviewer. The informal conference will be held concurrently with any informal dispute resolution held pursuant to 42 CFR Section 488.331 for those health care facilities certified under Medicare or the medical assistance program.

*a. Definition.* For purposes of this subrule, "independent reviewer" means an attorney licensed in the state of Iowa who is not currently and has not been employed by the department in the past eight years, or has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.

*b. Request for informal conference.* The request for an informal conference must be in writing, addressed to the compliance officer and include the following:

- (1) Identification of the citation(s) being disputed;
- (2) The type of informal conference requested: face-to-face or telephone conference; and
- (3) A request for surveyor worksheets for the citation(s) being disputed, if desired.

*c. Submission of documentation.* Within the same ten-day period required for submission of a plan of correction pursuant to 481—subrule 50.10(7), the facility shall submit the following:

- (1) The names of those who will be attending the informal conference, including legal counsel; and
- (2) Documentation supporting the facility's position. The facility must highlight or use some other means to identify written information pertinent to the disputed deficiency(ies). Supporting documentation that is not submitted within the required time frame will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. "Good cause" means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the facility has shown good cause, the independent reviewer shall consider what circumstances kept the facility from submitting the supporting documentation within the required time frame.

*d. Face-to-face or telephone conference.* A face-to-face or telephone conference, if requested, will be scheduled to occur within ten business days of the receipt of the written request, all supporting documentation, and the plan of correction required by 481—subrule 50.10(7).

(1) Failure to submit supporting documentation will not delay scheduling.

(2) The conference will be scheduled for one hour to allow the facility to informally present information and explanation concerning the contested deficiencies. Due to the confidential nature of the conference, attendance may be limited.

(3) If additional information is requested during the informal conference, the facility will have two business days to deliver the additional materials to the department.

(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the facility may be given one opportunity to reschedule the face-to-face conference.

*e. Results.* The results of the informal conference will generally be sent within ten business days after the date of the informal conference, or within ten business days after the receipt of additional information, if requested.

(1) The independent reviewer may affirm or may modify or dismiss the citation. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the citation.

(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) citation if changes result from the informal conference.

(3) The facility must submit to the department a new plan of correction for the amended or corrected citation within ten calendar days from the date of the letter conveying the results of the informal conference.

ITEM 2. Amend rule 481—56.15(135C) as follows:

**481—56.15(135C) Procedure for facility after informal conference.** After the conclusion of an informal conference requested by the licensee and provided pursuant to 56.14(3):

**56.15(1)** If the facility does not desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five ~~working~~ business days after the informal conference, or within five ~~working~~ business days after receipt of the written decision and explanation of the ~~department of inspections and appeals' representative at the informal conference~~ independent reviewer, whichever occurs later, comply with the provisions of subrule 56.14(1).

**56.15(2)** If the facility does desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five ~~working~~ business days after the informal conference, or within five ~~working~~ business days after receipt of the written decision and explanation of the ~~department of inspections and appeals' representative at the informal conference, as the case may be,~~ independent reviewer, whichever occurs later, notify the department of inspections and appeals in writing of the facility's intent to formally contest the citation.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.